

¹ 5 U.S.C. § 8101 *et seq.*

reconsideration under 5 U.S.C. § 8128.² The Board determined that he had not submitted evidence or raised argument sufficient to warrant OWCP reopening his case for further merit review. The facts and the circumstances as set forth in the prior decision are hereby incorporated by reference.

On August 23, 2011 appellant requested that OWCP modify its April 16, 1999 schedule award decision granting him a schedule award for a 30 percent binaural hearing loss. He indicated that he had received a schedule award on May 21, 1996 for a 12 percent binaural hearing loss and argued that his preexisting impairment should have been included in, rather than deducted from, OWCP's finding that he was entitled to an additional 30 percent impairment.

In response to multiple telephone calls from appellant, by letter dated November 9, 2011, OWCP related that it had informed him numerous times to file a new claim for hearing loss as he had work exposure after 1999. It noted that the award for a 12 percent impairment was not a preexisting impairment but rather the amount that it originally awarded him for his hearing loss.

On December 14, 2011 appellant requested reconsideration of a purported November 9, 2011 decision. He asserted that OWCP failed to provide adequate factual and legal findings under 20 C.F.R. § 10.126 or include appeal rights or a memorandum containing the evidence relied upon in reaching the decision in accordance with its procedures.

On January 17, 2012 appellant requested reconsideration of the Board's August 16, 2011 decision. He maintained that OWCP erroneously found that he had to show additional employment exposure to establish increased hearing loss. Appellant cited Board cases in support of his contention that he did not need to show additional noise exposure to obtain an increased schedule award and that OWCP erred in failing to develop the evidence.³ He also maintained that it failed to consider all the evidence of record or further develop the evidence. Appellant cited *Rudy C. Sixta*,⁴ for the proposition that to terminate or modify compensation OWCP must show that the disability has ceased or the original determination was erroneous. He noted that the procedure manual provided that OWCP should use precedent in adjudicating a case and place memoranda in the case file explaining the facts and law relevant to its determination. Appellant

² Docket No. 11-230 (issued August 16, 2011). In 1993 OWCP accepted that appellant, then a 54-year-old pipefitting foreman, sustained binaural hearing loss due to factors of his federal employment under subsidiary file number xxxxxx627. It granted him a schedule award on May 21, 1996 for a 12 percent binaural hearing loss. By decision dated April 16, 1999, OWCP granted appellant a schedule award for an additional 30 percent binaural hearing loss. In a decision dated December 4, 2008, it denied his claim for an increased schedule award due to hearing loss. OWCP advised appellant to file a new claim as he had additional noise exposure after it accepted his claim. In decisions dated February 25 and June 24, 2009, it modified its December 4, 2008 decision after finding that he did not establish a causal relationship between his increased hearing loss and work factors. In nonmerit decisions dated March 25 and October 21, 2010, OWCP denied appellant's request for reconsideration and again noted that he should file a new occupational disease claim.

³ Appellant cited *J.G.*, Docket No. 07-1015 (issued September 13, 2007) in which the Board found that OWCP erred in denying a claimant's request for reconsideration as untimely. It noted that he could request an increased schedule award at any time without further noise exposure. Appellant also cited *J.G.*, Docket No. 08-698 (issued August 7, 2008) in which the Board remanded the case for OWCP to further develop the evidence.

⁴ 44 ECAB 727 (1993).

argued that OWCP did not use precedent and erred in failing to send the statement of accepted facts to an OWCP medical adviser as causal relationship is a medical determination for a physician. He noted that, as found by the Board in *William A. Couch*,⁵ OWCP must consider all the evidence properly submitted. Appellant asserted that on December 13, 2007 OWCP acknowledged that he had an accepted claim for bilateral hearing loss and argued that OWCP should assist in developing the case.

By decision dated March 30, 2012, OWCP denied appellant's request for reconsideration after finding that it was untimely filed and did not show clear evidence of error. It found that he was unable to request reconsideration of the Board's decision but could request reconsideration of the last merit decision dated June 24, 2009. OWCP reviewed the June 24, 2009 decision, which found that appellant did not submit rationalized medical evidence showing increased hearing loss due to his accepted work injury. It determined that the cases and procedural manual sections he cited were not relevant to his case. OWCP indicated that it had advised appellant to file a new occupational disease claim based on his additional noise exposure.

On appeal appellant argued that he could request an increased schedule award if the evidence showed that he had an increased impairment. He maintains that, if a claimant used the term reconsideration but submitted evidence showing a permanent impairment subsequent to the prior schedule award, it should be treated as a claim for an increased schedule award and not held to time limitations. Appellant cites *Paul Fierstein*⁶ and *J.G.*,⁷ in support of his claim that OWCP erred in finding that his request for reconsideration was untimely.

LEGAL PRECEDENT

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.⁸

It is well established that a claim need not be filed on any particular form; an informal claim in writing is sufficient, so long as it contains words which reasonably may be construed or accepted as a claim.⁹ Letters and statements in amplification and expansion of a claim are as much a part of a claim as the claim form itself.¹⁰

⁵ 41 ECAB 548 (1990).

⁶ 51 ECAB 381 (2000).

⁷ Docket No. 07-1015 (issued September 13, 2007).

⁸ See *B.K.*, 59 ECAB 228 (2007); *Candace A. Karkoff*, 56 ECAB 622 (2005).

⁹ *Barbara A. Weber*, 47 ECAB 163 (1995).

¹⁰ *Id.*

ANALYSIS

In 1993 OWCP accepted that appellant sustained binaural hearing loss due to factors of his federal employment under subsidiary file number xxxxxx627. It granted him a schedule award on May 21, 1996 for a 12 percent binaural hearing loss. By decision dated April 16, 1999, OWCP granted appellant a schedule award for an additional 30 percent binaural hearing loss.

Appellant subsequently requested an additional schedule award. By decision dated December 4, 2008, OWCP denied his claim for increased hearing loss. It found that he should file a new claim as he had additional noise exposure. In decisions dated February 25 and June 24, 2009, OWCP modified the December 4, 2008 decision and determined that appellant did not establish increased hearing loss causally related to work factors. In nonmerit decisions dated March 25 and October 21, 2010, it denied his request for reconsideration and again found that he should file a new occupational disease claim. On August 16, 2011 the Board affirmed the October 21, 2010 nonmerit decision.

On January 17, 2012 appellant requested reconsideration.¹¹ He maintained that OWCP should have assisted in developing the medical evidence. Appellant asserted that on December 13, 2007 OWCP had accepted that he sustained additional hearing loss.

The Board finds that the case is not in posture for decision. By decision dated March 30, 2012, OWCP denied appellant's request for reconsideration of the June 24, 2009 decision and again advised him to file a new occupational disease claim based on his additional noise exposure. It is well established, however, that a claim need not be filed on any particular form; an informal claim in writing is sufficient, so long as it contains words which reasonably can be construed or accepted as part of a claim.¹² Letters and statements in amplification and expansion of a claim are as much a part of a claim as the claim form itself.¹³ OWCP previously accepted binaural hearing loss and granted appellant a schedule award. Appellant requested an additional schedule award and OWCP determined that he was claiming hearing loss as a request of additional noise exposure from 1998 to 2001. Whether or not a separate claim form should have been submitted, the evidence of record establishes an occupational disease claim.¹⁴ Technical requirements of pleading are inconsistent with the remedial purposes of the statute.¹⁵ The Board

¹¹ Initially appellant indicated that he was requesting reconsideration of a November 9, 2011 decision. He challenged the purported decision as it did not contain findings of fact and conclusions of law under 20 C.F.R. § 10.126. However, OWCP's November 9, 2011 correspondence was informational in nature rather than a final decision with appeal rights. It explained that the 12 percent permanent impairment it originally paid him for binaural hearing loss was not included in his subsequent award for a 30 percent binaural hearing loss as it was not considered a preexisting condition but instead constituted the original award. As it was not a final decision but instead an explanation of the prior awards, it did not require findings of fact and legal conclusions under 20 C.F.R. § 10.126.

¹² See *Dale M. Newbigging*, 44 ECAB 551 (1993).

¹³ See *Wilfred M. Hamilton*, 41 ECAB 524 (1990).

¹⁴ *Id.*; see also *Marc J. Logie*, 12 ECAB 257 (1960).

¹⁵ See *Grady L. Frazier*, 40 ECAB 1298 (1989) (FECA and the regulations promulgated thereunder are remedial in nature).

finds, consequently, that OWCP should have adjudicated appellant's claim as a new occupational disease. The case will be remanded for this purpose. After such further development as deemed necessary, OWCP should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board